

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDMOND GRANT P/K/A “EDDY GRANT”, GREENHEART MUSIC LIMITED, a United Kingdom Limited Company, and GREENHEART MUSIC LIMITED, an Antigua and Barbuda Limited Company,

Plaintiffs,

– against –

DONALD J. TRUMP and DONALD J. TRUMP FOR PRESIDENT, INC.,

Defendants.

Civil Action No. 1:20-cv-07103-JGK

PLAINTIFFS’ STATEMENT OF MATERIAL FACTS

Pursuant to Rule 56.1(a) of the Local Rules of the United States District Court for the Southern District of New York, plaintiffs Edmond Grant (“Grant”), Greenheart Music Limited, a United Kingdom Limited Company (“Greenheart UK”) and Greenheart Music Limited, an Antigua and Barbuda Limited Company (“Greenheart Antigua,” and together with Greenheart UK and Grant, “Plaintiffs”), respectfully submit the following Statements of Material Facts and contends that there exist no genuine issues to be tried:

1. Grant is a musician and songwriter residing in Barbados and is a citizen of the United Kingdom. Declaration of Edmond Grant dated September 15, 2023 (“Grant Decl.”) at ¶¶1-

2.

2. Grant wrote, recorded, and produced the Works entitled “Electric Avenue.” *Id.* and Exhibit 1.

3. Grant testified that he created Electric Avenue as a “protest song, in common vernacular,” but that “[e]veryone interprets a song in their own way.” *Id.* Exhibit 11 (Deposition Transcript of Edmond Grant, hereinafter “Grant Tr.”) at 41:9-15.

4. Grant testified that while the inspiration for the song included commentary on sociological issues, songwriters “find meaning in words and images that those words create.” *Id.* at 41:21-42:18.

5. Grant testified “[i]t’s not specific inasmuch as that there are many Electric Avenues in the world.” *Id.* at 43:9-10.

6. Plaintiff Greenheart Antigua is a limited company organized and existing under the laws of Antigua and Barbuda with a principal place of business located at 39 Market Street, St. John’s, Antigua and Barbuda, West Indies. *Id.* at ¶¶1-2 and Grant Tr. at 19:4-21:21.

7. Greenheart UK is a limited company organized and existing under the laws of United Kingdom with a principal place of business located at 1341 High Road, Whetstone, London N20 9HR. Greenheart UK was formed in 1997 to act as the licensing arm of Greenheart Antigua with respect to Grant’s musical works, including but not limited to the Sound Recording. *Id.*

8. Grant is the sole owner of both Greenheart UK and Greenheart Antigua. *Id.* In or about 1983 Grant assigned all of his rights and interests in the Works to Greenheart Antigua. *Id.* at ¶4.

9. On February 7, 1983, Greenheart Antigua registered the Composition in the United States Copyright Office (the “Copyright Office”) under registration number PA0000164029. *Id.* Exhibit 2.

10. The Sound Recording, which embodies Grant’s musical performance of the Composition, was initially released in 1983. *Id.* at ¶2.

11. By written agreement with Warner Music UK Limited (“Warner Music”) dated May 3, 2001 (the “Warner Music Agreement”), Greenheart UK licensed the copyright in the Recording, among other works, to Warner Music for a territory including the United States for a period of five (5) years from the date of the first release of the Recording in the United Kingdom. *Id.* Exhibit 4.

12. During the term of the Warner Music Agreement, Warner Music’s affiliate, London Records, re-released the Recording in 2001 on the album entitled “Eddy Grant: The Greatest Hits” (the “Album”). On March 22, 2002, London Records registered the Album containing the Sound Recording in the Copyright Office under registration number SR0000344006. *Id.* Exhibit 3.

13. The Warner Music Agreement expired by its terms and/or terminated no later than September 20, 2006, at which point Greenheart UK became the beneficial owner of the SR copyright registration for the Album and Sound Recording. *Id.* at ¶7.

14. On July 21, 2008, Greenheart UK licensed the publishing rights in Electric Avenue to EMI Music Publishing Limited (“EMI”). Greenheart Antigua remained the beneficial owner of the Composition copyright and has had the continuing right to receive royalties for the commercial exploitation of the copyright. Further, Greenheart Antigua continued to own the Sound Recording copyright. *Id.*, at ¶8 and Exhibit 5.

15. In or about 2018, Sony purchased EMI. Declaration of Brett Van Benthysen dated September 15, 2023 (“Van Benthysen Decl.”) Exhibit 12.

16. On August 29, 2020, Grant confirmed the assignment in 1983 of all his rights and interests, including the copyrights, in and to the Works, to Greenheart Antigua, in an ex post facto written agreement between Grant and Greenheart Antigua. Grant Decl. Exhibit 7.

17. Plaintiffs have received at times considerable sums of money licensing Electric Avenue. Grant Decl. Exhibits 8, 9, and 10.

18. Trump was the 45th President of the United States. The Campaign [REDACTED].
[REDACTED].
Van Benthysen Decl. Exhibit 21 (Deposition Transcript of Donald Trump, hereinafter “Trump Tr.”) at 10:23-12:7, Exhibit 22 (Deposition Transcript of Daniel J. Scavino, hereinafter “Scavino Tr.”) at 28:18-29:5.

19. On August 12, 2020, Daniel Scavino (“Scavino”), who was [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] a 55 second video (the Infringing Video) in which the Sounds Recording, which embodies the Composition, can be heard starting at the 15 second mark and continuing for the duration of the video. *Id.* Exhibits 13, 14, and 15 (a video file of the Infringing Video); Scavino Tr. at 49:13-51:18.

20. Scavino testified that [REDACTED]
[REDACTED]. Scavino Tr. at 55:2-56:17. He also [REDACTED]
[REDACTED] Scavino Tr. at 49:13-51:18.

21. Trump testified that [REDACTED]
[REDACTED] Trump Tr. at 33:19-34:21, 36:24-37:11. Trump, Scavino, and/or the Campaign never licensed the Works, and Plaintiffs never authorized or consented to Defendants’ use of the Works. Grant Decl. at ¶15.

22. The Infringing Video endorses Trump’s 2020 presidential re-election campaign to “Keep America Great” (aka “KAG”) and attempts to denigrate the Democratic Party’s 2020 presidential nominee, Former Vice President Joseph Biden. Van Benthysen Decl. Exhibit 15. The Infringing Video contains a visual depiction of a high-speed red train bearing the words “Trump Pence KAG 2020” in stark contrast to a slow moving handcar bearing the words “Biden President: Your Hair Smells Terrific” being powered by an animated likeness of Former Vice President Biden while out-of-context excerpts of Former Vice President Biden’s speeches and interviews are played over the Sound Recording.

23. In 2020 Trump and the Campaign [REDACTED]
[REDACTED]. Trump Tr. at 17:1-17;
Scavino Tr. at 33:1-34:10.

24. Trump and Scavino [REDACTED]
[REDACTED]. Trump Tr. at 20:20-21:15, 23:16-24:3; Scavino Tr. at 20:11-21:2, 35:2-38:4; Van Benthysen Decl., Exhibit 18 ([REDACTED]
[REDACTED]).

25. Scavino testified that [REDACTED]
[REDACTED]
[REDACTED]. Scavino Tr. at 25:14-26:17.

26. Trump, Scavino, and the Campaign [REDACTED]
[REDACTED]. Trump Tr. at 27:20-29:24; Scavino Tr. at 44:5-20.

27. Trump testified that [REDACTED]
[REDACTED]. Trump Tr. at 26:5-20.

28. Trump testified that [REDACTED]
[REDACTED]. *Id.* at 44:8-45:12.

29. When asked [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 42:8-25, 44:2-7.

30. Scavino testified that [REDACTED]
[REDACTED].
Scavino Tr. at 40:11-14, 52:15-18.

31. Scavino testified that [REDACTED]
[REDACTED]. *Id.* at 39:15-40:1, 40:19-41:3.

32. Scavino also testified that [REDACTED]
[REDACTED]
[REDACTED] *Id.* at 64:14-65:19.

33. Trump [REDACTED].
Id. at 76:15-18.

34. Scavino testified that [REDACTED]
[REDACTED] *Id.* at 66:12-67:18.

35. The Infringing Video [REDACTED]
[REDACTED]. Trump Tr. at 20:10-19.

36. According to Twitter, the Infringing Video has been viewed more than 13.7 million times. Van Benthysen Decl. Exhibits 13 and 14. The Tweet containing the Infringing Video has

been “liked” more than 350,000 times, re-tweeted more than 139,000 times, and has received close to 50,000 comments. *Id.*

37. By letter dated August 13, 2020 (the “Cease and Desist Letter”), Plaintiffs, through their counsel, advised Defendants of Plaintiffs’ beneficial copyright ownership in the Works and Defendants’ unauthorized uses thereof in connection with the Infringing Video, and demanded that Defendants cease and desist from any further infringing conduct. Grant Decl. Exhibit 6.

38. Defendants failed and/or refused to comply with Plaintiffs’ demands set forth in the Cease and Desist Letter, and specifically did not cease and desist from using the Infringing Video as requested. As of September 1, 2020, the date the Complaint was filed, neither the Infringing Video nor the Tweet containing the Infringing Video had been removed from Twitter. Van Benthysen Decl. Exhibit 19.

39. On August 13, 2020, Plaintiffs also sent Twitter a notice to remove the Tweet and Infringing Video. Van Benthysen Decl. Exhibit 16.

40. As of September 1, 2022, Twitter had not removed the Tweet or Infringing Video. *Id.* Exhibit 19 at GRANT0293.

41. On September 1, 2022, Plaintiffs filed their Complaint against Defendants. *Id.* Exhibit 17.

42. On November 11, 2020, Defendants moved to dismiss the Complaint on the ground that the use of the Works constituted a fair use, a complete defense against any claim for infringement. ECF Doc. No. 19.

43. On September 28, 2021, the Court issued an Order and Opinion denying Defendants’ motion in its entirety. *Grant v. Trump*, 563 F. Supp. 3d. 278, 282 (S.D.N.Y. 2021).

44. On October 19, 2021, Defendants filed their Answer. Van Benthysen Decl. Exhibit 20.

45. Defendants could not produce a 30(b)(6) witness for the Campaign. *Id.* at ¶14 and Exhibit 23.

Dated: September 15, 2023

Respectfully submitted,

By: s/ Brett Van Benthysen

Brian D. Caplan

Robert W. Clarida

Brett Van Benthysen

Reitler Kailas & Rosenblatt LLP

885 Third Avenue, 20th Floor

New York, New York 10022

bcaplan@reitlerlaw.com

rclarida@reitlerlaw.com

bvanbenthysen@reitlerlaw.com

Attorneys for Plaintiffs